

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Crim. No.13-10200-GAO
	)	
DZHOKHAR A. TSARNAEV,	)	<u>UNDER SEAL</u>
Defendant	)	

**GOVERNMENT’S RESPONSE TO DEFENDANT’S MOTION  
TO EXCLUDE CERTAIN CONCLUSIONS REGARDING  
DNA EVIDENCE AND MOTION TO SUPPLEMENT EXPERT DISLCOSURES**

The government, by and through undersigned counsel, respectfully submits this response to Tsarnaev’s motion to exclude certain conclusions regarding DNA evidence, and moves to supplement it expert disclosures regarding DNA evidence.

**INTRODUCTION**

In response to Tsarnaev’s argument that DNA Analyst Jennifer Montgomery should not be permitted to testify that Dzhokhar Tsarnaev is a potential contributor of DNA found inside a glove (Item 12-9.5.1) without providing random match statistics, the government has had Cybergenetics, an outside laboratory, perform a computer analysis of the DNA Identifiler data profiles referenced in Ms. Montgomery’s report using the TrueAllele method. TrueAllele is a scientifically-validated method of calculating match statistics in samples that contain a mixture of DNA from more than one person. Based on that analysis, Dr. Mark Perlin, a Cybergenetics analyst, is prepared to testify that:

A match between the glove (Item 12-9.5.1) and Dzhokhar Tsarnaev (Item 12-1.1.1) is:

- 2.98 million times more probable than a coincidental match to an unrelated Black person,
- 45.2 thousand times more probable than a coincidental match to an unrelated Caucasian person, and
- 24.1 thousand times more probable than a coincidental match to an

unrelated Hispanic person.

A match between the glove (Item 12-9.5.1) and Tamerlan A. Tsarnaev (Item 15-1.1) is:

- 9.84 million times more probable than a coincidental match to an unrelated Black person,
- 155 thousand times more probable than a coincidental match to an unrelated Caucasian person, and
- 70.6 thousand times more probable than a coincidental match to an unrelated Hispanic person.

Copies of Dr. Perlin's qualifications, report, and complete file, including lab notes, are being produced to Tsarnaev today. Reports of seven different studies in which the TrueAllele method has been validated can be found at <https://www.dropbox.com/sh/sdk91jeesf9hfu2/AAAXL-lO5PQXSWcfDcoe0OhCa?dl=0>.

### **ARGUMENT**

The government moves for leave to supplement its expert disclosures with the information contained in this opposition and in the related materials being provided to Tsarnaev. Assuming that motion is granted, Tsarnaev's motion to exclude Ms. Montgomery's conclusion that Tsarnaev is a potential contributor of DNA found inside a glove (Item 12-9.5.1) without also providing match statistics will effectively be moot. Granting this motion will not prejudice Tsarnaev because Mr. Perlin's work consisted of only of performing a computer analysis of existing DNA data that was previously provided to Tsarnaev in discovery. The TrueAllele® method is well-known, well-established, and will be easily understood by Tsarnaev's own DNA expert. Its application to the data in this case is fully documented in the materials being provided to Tsarnaev in discovery.

### CONCLUSION

WHEREFORE, the government respectfully requests that the Court (1) grant its motion to supplement its expert disclosures and (2) deny Tsarnaev's motion to exclude as moot.

Respectfully submitted,

CARMEN M. ORTIZ  
UNITED STATES ATTORNEY

By: /s/ William D. Weinreb  
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Assistant U.S. Attorneys

### CERTIFICATE OF SERVICE

I hereby certify that this document was served by electronic mail on Dzhokhar Tsarnaev's attorney, Judy Clarke, Esq., on December 19, 2014.

/s/ William D. Weinreb  
WILLIAM D. WEINREB